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Prosecution of FBI, CIA Agents: An Idea Coming Under Fire

DID WASHINGTON bite off more than it can chew in its drive to prosecute federal law-enforcement and intelligence officers for breaking the law while carrying out their official duties?

There is growing evidence that the Justice Department is reluctant to go to court with cases against former officials of the Federal Bureau of Investigation and Central Intelligence Agency who are suspected of crimes ranging from illegal mail openings and wiretaps to perjury. Attorney General Griffin B. Bell indicated that he is having second thoughts on the question when he said recently: "Maybe my judgment was bad. I indicted one agent—the first time an agent has ever been indicted. We kept up with the mail for a long time.... There were thousands of pieces. The mail against me was 100 to 1."

Now, Bell says, while indictment of some present or former agents is not ruled out, it is more likely that agents suspected of wrongdoing will be disciplined by the Bureau rather than prosecuted.

The accused. The one indicted agent is John J. Kearney, 56, and if the Government had deliberately set out to put the FBI on trial it could not have picked a more symbolic target.

Tall, slim and handsome—the perfect image of the old-fashioned, straight-arrow G-man—Kearney was indicted by a federal grand jury in New York on April 7 and now is awaiting trial.

The former agent is accused of heading a squad in the FBI's New York office that broke the law by stealing and opening mail and wiretapping telephones in an effort to solve a series of bombings blamed on the radical Weatherman group. If convicted, he could be sentenced to up to 20 years in prison.

Friends note bitterly that the indictment against Kearney came four years and 10 months after he had retired, ending a 24-year career in the Bureau, and only two months before the statute of limitations would have barred prosecution.

Although Kearney has not commented on the charges, his supporters clearly view his indictment as an attack on vital counterintelligence techniques.

As a result, several groups have come to the former agent's defense. They have raised some \$600,000 to help pay his legal bills and those of others who may be accused. One group, made up largely of former intelligence officers,

set up the Security and Intelligence Fund, headed by James Angleton, former chief of counterintelligence for the CIA.

In a fund-raising letter, the group said that what Kearney is accused of doing was part of the "normal *modus operandi* of effective national counterintelligence activities." The letter added: "Kearney's defense is our defense! What Kearney did was in the line of duty."

When Kearney was charged, it was



John J. Kearney has become the central figure in the Government's crackdown on counterintelligence tactics.

widely assumed that his was only the first in a series of indictments that would include former top officials of the Bureau. Attorney General Bell told *U.S. News & World Report* last May that a recommendation for further indictments was on his desk. But by early September, no new actions had been filed, and one former superior to Kearney in the New York FBI office had been notified that he would not be charged.

If no others are accused, Kearney's trial shapes up as a key courtroom test of once-accepted practices by American counterintelligence agents. Edward Bennett Williams, a prominent Washington lawyer who will handle Kearney's defense, said that he expected the trial to begin late this year or early next year.

Some close observers of the case are beginning to doubt, however, that Kearney will ever come to trial.

This doubt is based on the amount of secret information that the Government

would have to make public in efforts to prove its case. U.S. District Judge Kevin Duffy already has ordered the Government to provide defense attorneys with details of every instance between 1947 and 1972 in which other FBI agents did what Kearney is accused of doing. Justice Department lawyers are preparing a sealed response asking Duffy to limit his order.

The fact that the Bureau did engage in hundreds of burglaries and thousands of mail openings and wiretaps has been made public. But details of those cases, some involving foreign governments, have remained secret.

Even more secret information would have to be revealed if the Government should indict any high-ranking officials of the FBI or CIA.

The pressure on the Attorney General is heavy from both sides. Angleton says that it is time to "wipe the slate clean" by dropping the indictment of Kearney and ending possible legal action against others. But civil-liberties groups have urged Bell just as strongly to continue with investigation and prosecution of FBI officials.

The concern of civil libertarians has been heightened by the opening of Government files spelling out how the FBI disrupted politically active groups, even when their activities were not illegal.

In the Weatherman case, most of those whose mail and phone calls were intercepted apparently were not suspects themselves, but persons who might be contacted by those being sought.

Design to disrupt. Government files recently made public showed that the Bureau had carried on a long campaign, including wiretaps and possibly other methods, to disrupt activities of the National Lawyers Guild. Similar actions were employed against several groups ranging from the Communist Party and the Socialist Workers Party to the Ku Klux Klan.

The opening of Government files has sparked several lawsuits and threats of legal action by those who feel their rights and their privacy have been violated by the Bureau or by other federal agencies.

Thus, even if Justice Department lawyers decide to drop their attempt to prosecute Kearney, repercussions of the former FBI agent's indictment will be felt for months to come.